

E-002/AI-92-1164 ORDER APPROVING CONTRACT WITH REQUIREMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of
Northern States Power Company
for Approval of Uranium
Enrichment Services Contract
between Northern States Power
Company and Louisiana Energy
Services

ISSUE DATE: August 6, 1993

DOCKET NO. E-002/AI-92-1164

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PROCEDURAL HISTORY

On October 1, 1992, Northern States Power Company (NSP or the Company) filed a petition seeking approval of a uranium enrichment services agreement between the Company and Louisiana Energy Services (LES). NSP filed an amendment to the proposed contract on March 1, 1993.

On April 5, 1993, the Department of Public Service (the Department) filed a report on the Company's petition. The Department recommended that the Commission approve the proposed uranium enrichment services contract.

NSP filed a response to the Department's comments on May 5, 1993. The Department in turn filed a reply on May 17, 1993.

A letter from LES to NSP was filed on July 14, 1993. In the letter, certain terms of the proposed contract were clarified.

The matter came before the Commission for consideration on July 22, 1993.

FINDINGS AND CONCLUSIONS

I. Factual background

LES is a joint venture which plans to construct and operate a nuclear enrichment facility in Louisiana. The facility should come online in late 1995.¹

NSP's link with LES is through NSP's subsidiary, NRG Energy, Inc. (NEI).² NSP owns 100% of NEI, which owns 100% of Graystone Corporation (Graystone), an investor in uranium enrichment services. Graystone is a general partner in the LES venture, and also owns LePaz, Inc. (LePaz), which is a limited partner in LES. Graystone and LePaz together own 6.74% of LES.

II. The proposed contract

NSP has three nuclear reactors, Monticello, Prairie Island I and II. These three reactors have an annualized need for enrichment services of 180,000 to 190,000 Separative Work Units (SWUs). At present, NSP and the U.S. Department of Energy (DOE) have a contractual agreement under which DOE supplies 70% of NSP's annual need for enrichment services. The remaining 30% of NSP's needs are purchased on the spot market. The contract between NSP and the DOE will expire under its terms on September 30, 1995.

On August 31, 1992, NSP and LES entered into a uranium enrichment services agreement, contingent upon Commission approval. Under the terms of this contract, LES would supply 30% of NSP's enrichment services needs from October 1, 1995 through September 30, 2005. The remainder of NSP's needs would be purchased on the spot market.

III. The affiliated interest statute and rules

NSP submitted its proposed contract to the Commission for approval pursuant to Minn. Stat. § 216B.48, and Minn. Rules, parts 7825.1900 to 7825.2300, the affiliated interest statute and

¹ A nuclear enrichment facility enriches or increases the uranium content of uranium fuel, then passes it to a fabrication facility, where it is put into fuel assemblies.

² NEI's predecessor in interest, NRG Group, Inc., was previously found an affiliated interest of NSP's within the meaning of Minn. Stat. § 216B.48, subd. 1. Docket No. E-002/AI-92-148.

rules. The Commission agrees that the contract is properly analyzed under these provisions. One definition of an affiliated interest is found in Minn. Stat. § 216B.48, subd. 1 (b): "Every corporation and person in any chain of successive ownership of five percent or more of voting securities." In this case, NSP and LES are in a chain of successive ownership of five percent or more of voting securities (through NEI, Graystone and LePaz) and therefore NSP and LES are affiliated interests.

Minn. Stat. § 216B.48, subd. 3 states that any contract or agreement between a public utility and an affiliated interest must receive written Commission approval in order to be valid and effective. This subdivision also provides that the Commission shall approve the contract or agreement if it is "reasonable and consistent with the public interest." The utility has the burden of proof for satisfying the Commission's review.

Minn. Rules, parts 7825.1900 to 7825.2300 establish filing requirements for utilities with affiliated interests. The rules also set out the process for Commission approval of contracts and establish the records which must be kept concerning contracts.

IV. Comments of the parties

A. NSP

NSP offered a number of reasons that the Commission should find that its contract with LES is reasonable and consistent with the public interest. First, NSP stated that the contract could bring about savings of approximately \$12 million over the life of the contract. NSP argued that no alternative supplier was available who was willing to offer comparable terms. NSP stated that implementation of the federal Clean Air Act may cause DOE prices to rise by at least \$20.00 per SWU by 1998. According to the Company, LES's enrichment process is less energy-intensive than the DOE's, and would therefore be less adversely affected by the Clean Air Act.

NSP pointed to the benefits of establishing a long term competitor to DOE for enrichment services. According to the Company, DOE has already responded to the possible competition by moving towards greater manufacturing efficiency and improved relations with customers.

The Company stated that the proposed contract with LES would provide greater flexibility to NSP's procurement of enrichment services. NSP noted that only 30% of the Company's enrichment needs, rather than the present 70%, would be fixed by contract. The remainder of the Company's needs would be procured on the spot market. The contract would provide stability along with flexibility. The terms of the contract establish fixed prices,

with a known escalation clause.

Finally, the Company stated that it will continue to follow the same accounting and documentation practices as it does for other fuel-related purchases. This will facilitate the Commission's review of specific purchase transactions in subsequent general rate proceedings.

B. The Department

The Department recommended approval of the Company's proposed uranium enrichment agreement with LES. The Department stated that NSP had fulfilled the statutory requirements of Minn. Stat. § 216B.48, subd 3, for approval of an affiliated interest contract, with one exception:

Satisfactory proof [must be] submitted to the Commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described herein to each public utility.

Since most costs of providing service have not yet occurred, LES is as yet unable to provide documentation. The Department therefore recommended that the lack of cost data not cause rejection of the contract. The Department noted further that Minn. Rules, part 7825.2300 (B) requires a utility to maintain relevant cost data of the affiliate. The Department recommended that the Commission make this requirement a part of its Order if it approved the proposed contract.

The Department recommended that the Commission find that the contract is consistent with the public interest. The Department cited the probable savings in fuel costs, increased competition for DOE services, and the fact that intervenors will have the chance to review costs in future NSP rate cases. The Department recommended that the Commission require the Company make relevant cost data available for inspection, pursuant to Minn. Rules, part 7825.2300 (B).

V. Commission action

A. Analysis under the affiliated interest statute

As noted previously, the Commission finds that NSP and LES are affiliated interests under the definition found at Minn. Stat. § 216B.48, subd. 1 (b). Therefore, under Minn. Stat. § 216B.48, subd. 3, the Commission must provide written approval of the proposed contract between NSP and LES in order for that contract to be valid and effective. Under that statutory provision, the Commission will approve a contract between affiliated interests if the proposed contract is reasonable and consistent with the

public interest.

B. Benefits of the contract

The Commission agrees with the Department that the contract offers significant benefits to ratepayers. Future savings over the life of the contract are estimated at \$12 million, with the possibility of greater savings if the Clean Air Act drives the DOE's prices as high as some industry analysts expect.

The contract terms will provide the Company the benefits of fixed prices and a known escalator in the contracted portion of its enrichment services needs, while allowing the flexibility to tap market opportunities for the remainder of its needs. These are real benefits to NSP ratepayers.

C. Possibility of liability for NSP

The Commission is aware of the possibility of liability for NSP through LES, both from NSP's indirect ownership interest and through the Company's contract with the enrichment services provider. Possible liability could take the form of damages for harm to the environment or of eventual responsibility for operations clean-up.

The Commission is also aware that the corporate structure does not provide perfect immunity from potential liability. For public policy reasons, courts may "pierce the corporate veil" if the corporate structure would otherwise provide unsuitable insulation from corporate responsibility.

In this particular set of facts, however, it would be necessary for a court to pierce two veils, that of NSP's subsidiary Graystone and that of NSP, in order to visit any LES liability upon NSP. Courts in Louisiana (the state of LES's incorporation) and the relevant federal appellate court have been generally reluctant to pierce the corporate veil. Louisiana courts have held that veil-piercing is only appropriate in two circumstances: where shareholders use the corporate identity to defraud a third party; and where the shareholders themselves conduct business with such disregard for the corporate form that they become indistinguishable from the corporation. No party has brought forth facts which would indicate that NSP comes within the confines of the Louisiana court's finding. Because of the corporate structures separating NSP from LES, and because NSP has not been accused of fraudulent or inappropriate corporate behavior, the possibility of NSP's liability through LES seems unlikely.

LES's current application for licensing from the Nuclear Regulatory Commission (NRC) provides further assurance to the Commission. The licensing process for uranium enrichment

facilities requires that the NRC ensure that the facility has adequate liability insurance coverage. The federal statute also requires that the NRC ensure that the prospective licensee has adequate available funds for decommissioning. This federal monitoring of LES as a prospective enrichment service provider is a source of assurance for NSP ratepayers and for the Commission.

Finally, certain provisions in the contract between NSP and LES were clarified in the letter from LES to NSP which was filed on July 14, 1993:

[a] shutdown of one or more of NSP's reactors would reduce or eliminate the need to procure enrichment services from LES. NSP would not have to pay for enrichment service not taken from LES because of a temporary or permanent shutdown of any of NSP's reactors.

The letter language clarifies that the proposed agreement is a "requirements" contract, which will not make NSP liable for purchases of uranium services beyond its actual usage.

C. Conclusion

The Commission has analyzed the benefits of the contract to NSP ratepayers and the possibility of liability stemming from the Company's relationship with LES. The Commission finds that the proposed uranium enrichment services contract is reasonable and consistent with the public interest. The Commission will approve the contract, with the requirement that the Company make cost data available for inspection, pursuant to the Department's request.

The Commission notes that approval of this contract does not guarantee eventual Company recovery of costs in future general rate cases. This concept is stated in Minn. Stat. § 216B.48, subd. 6, which states in relevant part:

The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

ORDER

1. The proposed uranium enrichment services agreement between NSP and LES is approved. The Company shall make LES cost data available for inspection by the Department and the Commission.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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